

**UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 8**

IN THE MATTER OF:)	U.S. EPA Region 8
)	Docket No.: CERCLA-08-2005-0002
Rocky Flats Industrial Park Site)	
Jefferson County, Colorado)	Proceeding Under Section 104(e) of the
)	Comprehensive Environmental Response,
Hwy. 72 Properties, Inc.,)	Compensation, and Liability Act, as
)	amended, 42 U.S.C. § 9604(e)
Respondent)	

SECOND ADMINISTRATIVE ORDER
FOR ACCESS

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I. JURISDICTION

1. This Second Administrative Order for Access ("Second Order") is issued to Highway 72 Properties, Inc. (hereinafter, "Respondent"), pursuant to the authority vested in the President of the United States by Section 104(e)(5) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. § 9604(e)(5), and the National Oil and Hazardous Substances Pollution Contingency Plan, 40 CFR § 300.400(d)(4). This authority was delegated to the Administrator of the United States Environmental Protection Agency ("EPA") on January 23, 1987, by Executive Order 12580, 52 Fed. Reg. 2923, and redelegated to the Regional Administrators of EPA on May 11, 1994, by EPA Delegation No. 14-6. This authority has been further jointly delegated to the Directors of the Legal Enforcement Program and the Technical Enforcement Program of the Office of Enforcement, Compliance and Environmental Justice of EPA Region 8.

II. STATEMENT OF PURPOSE

2. EPA issued an Administrative Order for Access ("First Order") to the Respondent on September 7, 2001, regarding Respondent's property ("Property") located at the Rocky Flats Industrial Park Site ("Site")(See Attachment A). EPA has determined it is necessary to issue this supplemental order to restrict Respondent's access to a portion of the Property to prevent interference with implementation of the removal action authorized by the September 25, 2000 Action Memorandum for the AERRCO/Thoro Properties at the Rocky Flats Industrial Park Site

and all response actions taken and to be taken in furtherance of the removal action (“Removal Action”). Specifically, EPA requires access for the following response activities in order to abate, prevent, minimize, stabilize, mitigate or eliminate the release or threat of release of hazardous substances present at the Site:

- A. Construction and operation of an air sparging and soil vapor extraction (“AS/SVE”) system;
- B. Maintenance of a locked security fence around the Removal Action area;
- C. Sampling any solids or liquids stored or disposed of at the Site;
- D. Drilling geoprobe holes for subsurface sampling of soils and groundwater;
- E. Sampling groundwater monitoring wells located at the Site;
- F. Taking soil, groundwater, surface water and air samples;
- G. Removal of personal property from areas needed for implementation of CERCLA response actions; and
- H. Otherwise acting pursuant to Sections 104(a)(1), (b)(1) of CERCLA, 42 U.S.C. §§ 9604(a)(1), (b)(1), and Section 104(e) of CERCLA, 42 U.S.C. § 9604(e).

This Order requires Respondent to grant access to the Property and refrain from interfering with the Removal Action being conducted and/or overseen by EPA, the Colorado Department of Public Health and the Environment (“CDPHE”) and their authorized representatives, and parties

conducting CERCLA response actions on the Property pursuant to administrative orders issued by or entered into with EPA ("EPA's Designees").

III. SUPPLEMENTAL FINDINGS OF FACT

3. The First Order contains relevant findings related to Respondent's ownership of the Property at the Site and the release or threatened release of a hazardous substance or pollutant or contaminant from the Site.

4. The duration of the required entry and access is highly dependent on the effectiveness of the AS/SVE system in removing sources of volatile organic compound contamination. EPA estimates that the duration of the required access is approximately five years.

5. Despite issuance of the First Order which required Respondent to refrain from interfering with EPA's access to the Property, Respondent has interfered. Specifically, Respondent has, without permission or authorization, used the electrical power source brought to the Property for the Removal Action. Respondent has also moved approximately one dozen large mobile homes, storage units and vehicles onto the area designated for the Removal Action. Respondent clearly was aware that these actions would interfere with the Removal Action, given that EPA, after repeated requests of Respondent to move this material were ignored or denied, had removed dozens of similar materials from Respondent's property in 2001, in preparation for the Removal Action.

6. On March 23, 2004, EPA sent a letter to Respondent regarding the new material that Respondent had placed in the Removal Action area (See Attachment B). EPA sought to have Respondent remove that material by May 1, 2004. Respondent failed to take any action to remove these materials, thereby requiring EPA to spend its resources and time to do this work with a resultant delay in the implementation of the Removal Action.

7. EPA's Designees have installed a security fence with a locked gate around the Removal Action area. Maintaining the fence and locked gate around the Removal Action area is a necessary response action. The fence serves several functions: i) the fence precludes unauthorized persons from entering the area where hazardous substances are being removed, in accordance with the Site health and safety plan; ii) the fence prevents inadvertent damage to the AS/SVE system; and iii) the fence reduces the opportunity for potential vandalism and theft of valuable equipment and electrical power.

IV. CONCLUSIONS OF LAW AND DETERMINATIONS

8. The First Order contains relevant conclusions of law and determinations relating to this matter.

9. Entry to property owned or controlled by Respondent by the agents, contractors, or other representatives of EPA, EPA's Designees and CDPHE, is needed for the purposes of taking a response action, or otherwise enforcing the provisions of CERCLA, within the meaning of Section 104(e)(1) of CERCLA, 42 U.S.C. § 9604(e)(1).

10. EPA's First Order for access to the Property has not been adhered to by Respondent.

V. ORDER

11. Based upon the Findings of Fact and Conclusions of Law and Determinations set forth above, in the First Order, and the Administrative Record, Respondent is hereby ordered to provide EPA, EPA's Designees, CDPHE, and their officers, employees, agents, contractors, and other representatives, full and unrestricted access at all reasonable times to the Property for the purpose of conducting the Removal Action.

12. Respondent shall not interfere with or otherwise limit any activity conducted at the Property pursuant to this Order by EPA, EPA's Designees, CDPHE, and their officers, employees, agents, contractors, and other representatives and shall not interfere with EPA's exercise of its access authorities pursuant to 42 U.S.C. § 9604(e) and 40 C.F.R. § 300.400(d). Any such interference shall be deemed a violation of this Order.

13. Respondent shall be allowed limited ingress and egress to the Removal Action area. However, no access will be allowed for the purpose of moving additional equipment or materials into the Removal Action area. Respondent's access must be supervised by EPA or an authorized representative of EPA. Unless exceptional circumstances exist, such ingress and egress shall be limited to weekdays, between 8:00 am and 5:00 pm, to be arranged by Respondent at least 24 hours in advance of Respondent's desired access to the Removal Action area. For safety reasons, no access will be allowed during periods when construction equipment is operating in the Removal Action area. Furthermore, Respondent shall abide by the applicable

requirements of the health and safety plan for the Site (as set forth in Attachment C), whenever Respondent enters the Removal Action area. Respondent shall contact the EPA Remedial Project Manager, Christina Prograss, in writing to arrange access. Ms. Prograss can be reached at:

Christina Prograss
Remedial Project Manager
United States Environmental Protection Agency
999 18th Street, Suite 300
Mail Code 8EPR-SR
Denver, CO 80202
Telephone: (303) 312-6009
E-mail: prograss.christina@epa.gov

14. Nothing herein limits or otherwise affects any right of entry held by the United States pursuant to applicable laws, regulations, or permits.

15. This Order shall apply to and be binding upon Respondent and its successors, heirs and assigns, and each and every agent of Respondent and upon all other persons and entities who are under the direct or indirect control of Respondent, including any and all lessees of Respondent.

16. In the event of any conveyance by Respondent, or Respondent's agents, heirs, successors and assigns, of an interest in the Property, Respondent or Respondent's agents, heirs, successors and assigns shall convey the interest in a manner which insures continued access to the Property by EPA, EPA's Designees, CDPHE and their representatives for the purpose of carrying out the activities pursuant to this Order. Any such conveyance shall restrict the use of the Property so that the use will not interfere with activities undertaken or to be undertaken by EPA and its representatives. Respondent, or Respondent's agents, heirs, successors and assigns shall notify EPA in writing at least thirty (30) days prior to the conveyance of any interest in the

Property, and shall, prior to the transfer, notify the other parties involved in the conveyance of the provisions of this Order.

VI. ENFORCEMENT

17. Compliance with this Order shall be enforceable pursuant to Section 104(e)(5) of CERCLA, 42 U.S.C. § 9604(e)(5). A court may impose a civil penalty on Respondent of up to \$32,500 for each day that Respondent unreasonably fails to comply with this Order, as provided in Section 104(e)(5) of CERCLA, 42 U.S.C. § 9604(e)(5), and the Civil Monetary Penalty Inflation Adjustment Rule, 69 Fed. Reg. 7121, 40 C.F.R. Part 19.4. In addition, any person who is liable for a release or threat of release of a hazardous substance or pollutant or contaminant and who fails to comply with this Order may be liable for punitive damages in an amount up to three times the amount of any costs incurred by the United States as a result of such failure, as provided in Section 107(c)(3) of CERCLA, 42 U.S.C. § 9607(c)(3). Nothing herein shall preclude EPA from taking any additional enforcement actions, and/or other actions it may deem necessary for any purpose, including the prevention or abatement of a threat to the public health or welfare or the environment arising from conditions at the Site, and recovery of the costs thereof.

18. Nothing in this Order constitutes a waiver, bar, release, or satisfaction of or a defense to any cause of action which EPA has now or may have in the future against Respondent, or against any entity which is not a party to this Order.

19. Nothing in this Order shall affect in any manner the right of EPA to issue any other orders to or take any other administrative or civil action against Respondent or any other parties under CERCLA which relate to the Site or any other site.

20. Nothing in this Order constitutes a decision on preauthorization of funds under Section 111(a)(2) of CERCLA, 42 U.S.C. § 9611(a)(2).

VII. ADMINISTRATIVE RECORD

21. EPA has established an Administrative Record which contains the documents that form the basis for the issuance of this Order. It is available for review by appointment on weekdays between the hours of 8:00 a.m. and 5:00 p.m. at the EPA offices in Denver. To review the Administrative Record, please contact Carol Blevins at (303) 312-6681 to make an appointment. A copy of the Administrative Record is also available for viewing at the Standley Lake Library in Arvada, Colorado.

VIII. OPPORTUNITY TO CONFER

22. Within four business days after receipt of this Order by Respondent, Respondent may request a conference with EPA, to be held no later than four business days after Respondent's request, on any matter pertinent to this Order, including its applicability, the factual findings and the determinations upon which it is based, the appropriateness of any actions Respondent is ordered to take, or any other relevant and material issues or contentions which

Respondent may have regarding this Order. Respondent may appear in person or by an attorney or other representative at the conference. Respondent may also submit written comments or statements of position on any matter pertinent to this Order no later than the time of the conference, or at least two business days before the effective date of this Order if Respondent does not request a conference. EPA will deem Respondent to have waived its right to the conference or to submit written comments if it fails to request the conference or submit comments within the specified time period(s). Any request for a conference or written comments or statements should be submitted to:

Suzanne Bohan
Enforcement Attorney
United States Environmental Protection Agency
999 18th Street, Suite 300
Mail Code 8ENF-L
Denver, CO 80202
Telephone: (303) 312-6925
E-mail: bohan.suzanne@epa.gov

IX. EFFECTIVE DATE; COMPUTATION OF TIME

23. This Order shall be effective four business days after its receipt by Respondent or Respondent's designated representative unless a conference is timely requested as provided above. If a conference is timely requested, then at the conclusion of the conference or after the conference, if EPA determines that no modification to the Order is necessary, the Order shall become effective immediately upon notification by EPA of such determination. If modification of the Order is determined by EPA to be necessary, the Order shall become effective upon notification by EPA of such modification. Any EPA notification under this paragraph may, at

EPA's discretion, be provided to Respondent by facsimile, electronic mail, or oral communication; provided that, if EPA does use such a form of notification, it will also confirm such notification by first class, certified or express mail to Respondent or its legal counsel. Any amendment or modification of this Order by EPA shall be made or confirmed in writing.

24. For purposes of this Order, the term "day" shall mean a calendar day unless expressly stated to be a business day. "Business day" shall mean a day other than a Saturday, Sunday, or federal legal holiday. When computing any period of time under this Order, if the last day would fall on a Saturday, Sunday, or federal legal holiday, the period shall run until the next business day.

X. NOTICE OF INTENT TO COMPLY

25. On or before the effective date of this Order, Respondent shall notify EPA in writing whether Respondent will comply with the terms of this Order. Respondent's failure to notify EPA of its unconditional intent to fully comply with this Order by the time the Order becomes effective shall be 1) construed as a denial of EPA's request for access, and 2) as of the effective date of the Order, treated as a violation of the Order. Such written notice shall be sent to:

Suzanne J. Bohan
Enforcement Attorney
United States Environmental Protection Agency
999 18th St., Suite 300
Mail Code: 8ENF-L
Denver, CO 80202
Telephone: (303) 312-6925

XI. TERMINATION

26. This Order shall remain in effect until the Directors of the Technical and Legal Enforcement Programs for EPA Region 8 notify Respondent in writing that access to the Property is no longer needed.

XII ATTACHMENTS

27. "Attachment A" is a Site map depicting Respondent's Property.

28. "Attachment B" is the March 23, 2004 letter from EPA to Respondent requesting removal of personal property within the Removal Action area.

29. "Attachment C" shall be the Health and Safety Plan requirements for visitors to the Site.

SO ORDERED.

Date: 10/14/04

SIGNED

Michael T. Risner, Director
Legal Enforcement Program
Office of Enforcement, Compliance and Environmental Justice

Date: Oct. 14, 2004

Marvin H. Frye for/

Sharon Kercher, Director
Technical Enforcement Program
Office of Enforcement, Compliance and Environmental Justice

IF YOU WOULD LIKE COPIES OF THE ATTACHMENTS, PLEASE CONTACT THE REGIONAL HEARING CLERK.

THIS DOCUMENT WAS FILED IN THE RHC'S OFFICE ON OCTOBER 15, 2004.